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2
3 IN THE DISTRICT COURT OF GUAM
4

5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 vs.

8 NATASHA PEREDO VITUG,

9 Defendant.

CRIMINAL CASE NO. 24-00008

ORDER

Denying Unopposed Second Motion to
Continue Trial and Related Dates (ECF No. 16)

10 Trial herein is scheduled to commence on March 4, 2025. *See* Order, ECF No. 12.

11 On December 4, 2024, the Defendant filed an Unopposed Second Motion to Continue Trial
12 and Related Dates (the “Second Motion to Continue”). *See* ECF No. 16. Therein, defense counsel
13 requested that the trial be continued for an unspecified period of time “to allow additional time
14 necessary to review discovery and continue the investigation, locate witnesses, and prepare the
15 defense against allegations that stretch back to at least 2013.” *Id.* at 1. Alternatively, the
16 Defendant requested that the current trial date be vacated, with a status hearing set for March 4,
17 2025, instead. *Id.* at 1-2. Having reviewed the instant motion and relevant case law, the court
18 DENIES the request for continuance as further discussed below.

19 **RELEVANT PROCEDURAL BACKGROUND**

20 On March 27, 2024, an Indictment was filed charging the Defendant with the following
21 offenses: Theft Concerning Program Receiving Federal Funds; Unauthorized Use, Transfer,
22 Acquisition, Alteration or Possession of SNAP¹ Benefits; Use of Means of Identification in
23 Furtherance of Fraud; and five counts of Wire Fraud. *See* Indictment, ECF No. 1. The Indictment
24 alleged that between February 2013 and November 2019, the Defendant – then employed as an
25 Eligibility Specialist with the Guam Department of Public Health and Social Services (“DPHSS”)
26

27
28 ¹ SNAP stands for the Supplemental Nutrition Assistance Program, formerly known as the
Food Stamp Program. *See* Indictment at ¶ 3, ECF No. 1.

1 – accessed the DPHSS system to unlawfully reapply for SNAP and Cash Assistance Programs
2 (“CAP”) benefits “in the names of program beneficiaries who had left Guam or otherwise terminated
3 their participation in the programs without authorization and without the beneficiaries knowledge
4 or consent.” *Id.* at ¶¶ 1, 6 and 9-10. The Indictment further alleged that the Defendant “manipulated
5 accounts of existing program participants in order to increase the amount of benefits issued and
6 obtained those benefits for her own use” and also “used the personal information of program
7 participants in order to apply for additional benefits, such as the CAP, for which there were not
8 qualified and obtained the benefits for her own use.” *Id.* at ¶¶ 16-17. At the request of the United
9 States, the court ordered that a warrant issue for the Defendant’s arrest.

10 On July 2, 2024, the Defendant was arrested. *See* Arrest Warrant Return, ECF No. 4.

11 The Defendant appeared in court on July 3, 2024, and the court appointed the Federal Public
12 Defender to represent her. *See* Am. Mins., ECF No. 10, and Appointment Order, ECF No. 6. The
13 Defendant entered not guilty pleas to the allegations, and the court set trial for September 10, 2024.
14 *See* Trial Scheduling Order, ECF No. 8.

15 On August 1, 2024, the Defendant filed an Unopposed Motion to Continue Trial and Related
16 Dates (the “First Motion to Continue”). *See* ECF No. 11. Said motion requested a continuance of
17 six months “to allow defense counsel additional time to complete discovery review exceeding 10,000
18 pages, confer with [the Defendant], conduct investigation, locate any witnesses, and prepare the
19 defense against allegations that stretch back from 2013.” *Id.* at 1.

20 On August 6, 2024, the court issued an Order granting the First Motion to Continue, finding
21 that the ends of justice served by granting the continuance outweigh the public and the Defendant’s
22 interests in the speedy trial. *See* Order, ECF No. 12. The court rescheduled trial to commence on
23 March 4, 2025. *Id.* at 2.

24 On December 4, 2024, the parties appeared before the court for a status hearing. *See* Mins.,
25 ECF No. 15. Defense counsel stated that she just sent the government a request for supplemental
26 discovery and just hired a forensic accountant the week prior to the hearing. Counsel asserted she
27 will need more time to investigate the matter, and the court instructed her that if she intends to seek
28 another continuance, any such motion has to be more detailed to justify a further extension.

On December 4, 2024, the Defendant filed the instant Second Motion to Continue. *See* ECF No. 16. The motion indicated that the government had no objection to the requested continuance. *Id.* at 2.

No party has requested a hearing on the Second Motion to Continue, and the court finds that oral argument on the matter is not necessary.

LEGAL STANDARD

In determining whether to grant a continuance, the court takes into consideration the speedy trial clock and the public's right to a speedy trial. A court may grant a requested continuance if the court finds "that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). The factors a court must consider in determining whether to grant an ends of justice continuance under the Speedy Trial Act ("the "STA") include: (1) whether the failure to grant a continuance would result in a "miscarriage of justice"; (2) whether the case is "so unusual or so complex" that it would be unreasonable to expect adequate preparation within the 70-day limit established by the STA; and (3) whether, in a case that is not so unusual or complex, the failure to grant a continuance would deny defense counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. 18 U.S.C. § 3161(h)(7)(B)(i), (ii) and (iv).²

The court is afforded "broad discretion" in determining whether to grant or deny a continuance. *United States v. Flynt*, 756 F.2d 1352, 1358 (9th Cir. 1985). When reviewing whether a district court abused its discretion in denying a motion for continuance, the Ninth Circuit Court of Appeals considers the following factors: (1) the extent of the defendant's diligence in preparing her defense prior to the trial date; (2) the likelihood that the continuance would serve a useful purpose; (3) the extent to which a continuance would inconvenience the court, the parties, or witnesses; and (4) the extent of prejudice, if any, to the defendant if the continuance was denied. *Id.* at 1359. "The weight accorded to each factor may vary from case to case; '[h]owever, in order to obtain a reversal,

² The STA includes a fourth factor which is not relevant to the discussions here. *See* 18 U.S.C. § 3161(h)(7)(B)(iii).

1 appellant must show at a minimum that he has suffered prejudice as a result of the denial of his
2 request.” *United States v. Mejia*, 69 F.3d 309, 314-15 (9th Cir. 1995) (quoting *Flynt*, 756 F.2d
3 at 1359).

4 DISCUSSION

5 The court will analyze each of the factors set forth in *Flynt*.

6 1. Diligence

7 The Second Motion to Continue indicates that counsel has reviewed over 10,000 pages and
8 conferred with the Defendant, sent the government a supplemental discovery request on
9 November 21, 2024,³ and “recently retained a forensic accountant expert.” Second Mot. Cont. at 2,
10 ECF No. 16. It is not clear whether *any* witness have been interviewed , but the motion notes that
11 counsel “needs more time to conduct witness interviews.” *Id.*

12 The instant motion was not accompanied by any supporting declaration. Counsel has had
13 approximately five months since her appointment to review the discovery provided thus far. The
14 court is unaware of any factors that would have made the discovery review extraordinarily time
15 consuming, given the low case criminal case load of this district and the fact that counsel was not
16 involved in any criminal trials over the last five months. There is no supporting declaration from
17 the accountant that explains how much time he will need to review the discovery and prepare a
18 report. Finally, counsel has not explained what efforts have been undertaken or will be taken to
19 locate and interview witnesses to prepare a defense. Overall, based on the scant information in the
20 motion, the court cannot find that counsel has been diligent or not diligent. At best, this factor
21 neither weighs in favor of nor against a continuance.

22 2. Usefulness of the Continuance

23 Defense counsel argues that a continuance is necessary to review anticipated supplemental
24 discovery. The court notes that the deadline to file pretrial motions is not until January 23, 2025.

26 ³ The motion asserts that the supplemental request included but was not limited to witness
27 interview recordings, the recording of the grand jury hearing, and other documents relating to
28 application, processing and issuance of SNAP and CAP benefits to the alleged recipients. Second
Mot. Cont. at 2, ECF No. 16.

1 Assuming that the United States has produced the supplemental requests, counsel should have
2 sufficient time over the course of the next month to review the additional discovery.

3 Counsel also asserts that the continuance is necessary to allow the forensic accountant to
4 review the discovery and supplemental discovery and to generate a report. Again, the court has not
5 been provided with any information that indicates how much time the retained expert will need to
6 complete these tasks or how the accountant's report will be useful for the defense.

7 Finally, counsel asserts that the continuance is necessary to conduct witness interviews. The
8 Indictment identifies five program recipients who had either left Guam or otherwise terminated their
9 participation in the programs. The motion notes that these recipients are deceased or have relocated
10 to the United States and the Philippines. The motion also asserts that the recipient's family
11 members, as well as current and previous DPHSS employees, have yet to be located and interviewed.
12 Despite the court's instructions to provide details in any future motion requesting a continuance, the
13 court is left wondering who are these witnesses, how many still have to be interviewed, which
14 witnesses can't be located, how will these witnesses will be useful for the defense, and what is the
15 counsel's proposed time frame for completing these interviews.

16 The Second Motion to Continue makes an insufficient showing of usefulness. Certainly,
17 every requested continuance is considered "useful" because it affords counsel with more time to
18 review documents and to locate and interview witnesses and provides the expert with more time to
19 review documents and prepare his report. But case authority⁴ requires something more than the
20 convenience of additional time to satisfy the "usefulness" factor.

21 The Defendant has already been given a six-month continuance, and the court needs to know
22 what *specifically* will a continuance accomplish beside providing counsel with more time to prepare.
23

24 ⁴ In *Flynt*, the appellate court found that the requested 30-day continuance would have served
25 a "useful" purpose because the defendant would have been allowed to present witnesses submit to
26 psychiatric examinations by psychiatrists of his own choosing with regard to his defense of
27 diminished mental capacity. 756 F.2d at 1360. In *Mejia*, the appellate court found that a
28 continuance would have been "useful" because it would have allowed the trial judge to see and hear
live testimony from two detectives involved in an interview of the Defendant and to assess their
credibility for purposes of the motion to suppress the interview. 69 F.3d at 315-16.

1 A second request for continuance should provide the court with a plan of specific items to be
2 accomplished during the requested continuance⁵ – filed under seal, if necessary – so that the court
3 can hold counsel accountable to said plan. Because the instant motion fails to provide any
4 information regarding the usefulness of a second continuance, this factor does not weigh in favor of
5 granting said request.

6 3. Inconvenience

7 The government does not oppose the requested continuance or expressed that it will suffer
8 any inconvenience if a continuance is granted. Because the trial is not scheduled to commence until
9 March 4, 2025, there is no inconvenience to the court. Accordingly, this factor supports the
10 requested continuance.

11 4. Prejudice

12 The motion does not allege that how the Defendant will be prejudiced if the continuance is
13 not granted. As noted, the parties still have seven weeks before pretrial motions are due and
14 approximately three more months until trial commences. The court cannot conclude at this time that
15 the Defendant will suffer prejudice if trial were to proceed as scheduled. The court finds that this
16 factor does not weigh in favor of the requested continuance.

17 In summary, the first factor is neutral, the second and fourth factors weigh against a
18 continuance, and only the third factor weighs in favor of granting a continuance. Having previously
19 granted a six-month continuance and despite the government's non-objection to a continuance, the
20 court cannot set a precedence of granting yet another continuance in the absence of specific details
21 that address the above factors. Accordingly, the court hereby denies without prejudice the Second
22 Motion to Continue.

23 IT IS SO ORDERED.



/s/ **Michael J. Bordallo**
U.S. Magistrate Judge
Dated: Dec 10, 2024

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26 ⁵ For example, in civil cases, the local rules require that a motion for extension “must
27 demonstrate a specific need for the requested extension and should be accompanied by a detailed
28 proposed amendment[.]” CVLR 16-1(b)(3). Additionally, a discovery completion deadline will only
be extended “if the remaining discovery is specifically described and scheduled, *e.g.*, the names of
each remaining deponent and the date, time and place of each remaining deposition.” *Id.*